IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.2 OF 2006
AND
SUMMONS FOR JUDGEMENT NO.476 OF 2005
IN
SUMMARY SUIT NO.1194 OF 2003

Excel Industries Ltd. ..Plaintiff

Vs.

Cymbio Pharma P.Ltd. ..Defendants

Mr.Amit Shroff for the plaintiff

Mr.S.P.Dalal i/b Dalal and Co. for the defendant

CORAM : S.U.KAMDAR, J
DATED : 16TH JANUARY, 2006

P.C.:

. By consent of the parties, Chamber Summons is placed on board and called out. Chamber Summons is made absolute. Amendment to be carried out within one week from today.

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Vs.

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P.C.:

1. The present suit is filed for the recovery of amount covered by way of Inter Corporate Deposit of Rs.20.0 lacs. It is the case of the plaintiffs that out of Rs.20.0 lacs, Rs.10 lacs is refunded and balance Rs.10 lacs is outstanding. The claim is raised for the amount of Rs.14,89,644/- with interest on the principal amount of Rs.10,00,000/- @ 16% p.a. from the date of the suit till payment and / or realisation. The learned counsel for the defendants has raised two defences.

2. Firstly, it has been contended that the winding up petition was filed in Karnataka High Court and the petition has been admitted. He further contended that by virtue of deposit made towards liquidator charges, Liquidator should be deemed to have been appointed. I do not find any substance in the aforesaid contention because order of the court has to expressly show the appointment of Provisional Liquidator. It is admitted by the learned counsel for the defendant that there is no such order of appointment of Provisional Liquidator and therefore the said defence has no merits.

3. The second defence raised by the defendant is there is no agreement to pay interest @ 16% p.a. However, it is an admitted position that interest has been paid from time to time @ 16% p.a. by the defendant to the plaintiff. In that light of the matter, I also do not find any substance in the said defence also.

4. However, with a view to give an opportunity to the defendants to defend the suit, I direct the

defendants to deposit a sum of Rs.10.0 lacs within 4 weeks failing which plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit of the said amount. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.